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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,097	03/24/1999	JOHN C. BURNS	53921/64	9336
23553	7590	10/05/2004	EXAMINER HARPER, KEVIN C	
MARKS & CLERK P.O. BOX 957 STATION B OTTAWA, ON K1P 5S7 CANADA			ART UNIT 2666	PAPER NUMBER

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/275,097	BURNS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kevin C. Harper	2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 8/10/04.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6,9-29 and 31-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 12-22 and 34-46 is/are allowed.
- 6) Claim(s) 1-11,23-29 and 31-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Response to Arguments***

Applicant's arguments, see page 11, last paragraph, and page 13, second and third paragraphs, filed August 10, 2004, with respect to the rejection(s) of claim(s) 1-6, 9-11, 23-29 and 31-33 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Arslan et al. (US 5,444,693). Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's arguments filed August 10, 2004, relating to the Nishimura reference on pages 12-13 have been fully considered but they are not persuasive. Applicant argued deficiencies in the rejection with respect to Nishimura that appear relevant to the new rejection of Hsing in view of Arslan.

1. Applicant argued that the combination of Hsing in view of Nishimura does not have messages transmitted according to priority. However in Hsing, messages are transmitted when a connection is reestablished. Thus, Hsing in combination with a priority reestablishment of connections teaches propagating release messages in order of priority because the release messages are transmitted when each connection is in the process of being reestablished.
2. In response to applicant's argument that one skilled in the art would logically be required to apply all of Nishimura's re-routing mechanisms, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871

(CCPA 1981). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 9 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsing (US 6,167,025) in view of Arslan et al. (US 5,444,693).

3. Regarding claim 1 and 23-24, Hsing discloses a method of releasing switched connections from a network entity (Figure 1 and Figure 2, item 220B; Figure 4A) in a signaling communications network (col. 13, lines 5-17). The switched connections are routed across the communication network (Figures 1 and 3-4) and are established between source and destination entities (col. 7, lines 35-44) using connection establishment request messages (col. 8, lines 29-60). Upon detection of a failure in a signaling link (col. 13, lines 5-17) where a portion of the link remains operational, propagating connection release messages from the network entity toward the source and destination (Figure 4; Figure 6, item 608; Figure 6, item 616 and Figure 7a, item 714-716) for each connection (Figure 6, item 604; Figure 7, item 709). However, Hsing does not disclose that a priority indicator is associated with each connection and that connections

are released in order of priority. Arslan discloses a stored priority indicator for connections in a look-up table (col. 5, lines 12-15 and 23-26; col. 5, lines 3-11) and releasing the connections in sequence according to priority (col. 6, lines 49-52; col. 8, lines 40-47). A message containing the connection's priority indicator and the source and destination of the connection is transmitted (col. 9, lines 29-34 and 47-50; col. 8, lines 48-55 and 59-63). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have priority indicators for connections and propagate connections release messages according to the priority of the connections in the invention of Hsing in order to establish alternate paths first for higher priority connections after a network outage.

4. Regarding claim 9, in Hsing the network is ATM (abstract, lines 1-3).

Claims 2-6, 25-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsing in view of Arslan applied to claim 1 or 23 above, and further in view of Tiedemann, Jr. et al. (US 5,914,950).

5. Regarding claims 2-3 and 25-26, Hsing in view of Arslan does not disclose compiling an ordered list or table of every connection and releasing the connections in the ordered release list in sequence from highest priority to lowest priority. Tiedemann discloses ordering according to priority a list of users to utilize network resources and selecting in sequence the highest priority user (col. 11, lines 21-30). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have an ordered list of connections for reestablishment in the invention of Hsing in view of Arslan in order to simplify and expedite the determination and selection of the highest priority connections.

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6. Regarding claims 4 and 26-28, the limitations of these claims have been addressed in the rejection of claim 1 and 23 above. Further regarding claim 26, additional limitations of this claim have been addressed in the rejection of claims 2-3 above.

7. Regarding claim 5, in Hsing messages are transmitted to the source and destination of the connections (Figure 4; Figure 6, item 608; Figure 6, item 616 and Figure 7a, item 714-716).

8. Regarding claim 6, this limitation has been addressed in the rejection of claim 4 above.

9. Regarding claims 29 and 31, in Hsing the network outage is due to a failure in the ATM signaling link (abstract, lines 1-3; col. 13, lines 5-17).

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsing in view of Arslan as applied to claim 9 above, and further in view of Hasegawa et al. (US 5,065,399).

Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsing in view of Arslan and Tiedemann as applied to claim 26 above, and further in view of Hasegawa et al. (US 5,065,399).

10. Regarding claims 10-11 and 32-33, Hsing in view of Arslan (or Hsing in view of Arslan and Tiedemann) does not disclose ordering a release list according to traffic rates. Hasegawa discloses giving restoration priority to the highest bandwidth connection (col. 2, lines 32-37 and 45-50). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to arrange the list of connections according to priority and bandwidth in the invention of Hsing in view of Arslan (or Hsing in view of Arslan and Tiedemann) in order to efficiently reserve spare network bandwidth to accommodate the failed connections.

***Allowable Subject Matter***

11. Claims 12-22 and 34-46 are allowed.

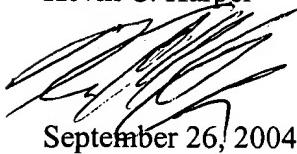
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:30 AM to 8:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao, can be reached at 571-272-3174. The centralized fax number for the Patent Office is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only (applications must be associated with a customer number). For more information about the PAIR system, see pair.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Harper



September 26, 2004



DANG TON  
PRIMARY EXAMINER